

# ARKANSAS SUPREME COURT

No. CR 08-1038

KEVIN J. STEINKUEHLER  
Petitioner

v.

HON. BARRY A. SIMS, CIRCUIT  
JUDGE  
Respondent

Opinion Delivered      November 6, 2008

PRO SE PETITION FOR WRIT OF  
MANDAMUS [CIRCUIT COURT OF  
PERRY COUNTY, CR 2004-11]

PETITION MOOT.

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## PER CURIAM

Appellant Kevin J. Steinkuehler, a prisoner incarcerated in the Arkansas Department of Correction, timely filed a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 in the Circuit Court of Perry County on May 17, 2005. On September 4, 2008, petitioner filed in this court the pro se petition for writ of mandamus that is now before us, contending that the Honorable Barry A. Sims, Circuit Judge, had failed to act on that petition. Respondent seeks a writ to compel the court to set a date for an evidentiary hearing or enter a final ruling.

Judge Sims filed a response to the mandamus petition, explaining that on an uncertain date he had entered an order denying the Rule 37.1 petition and an amended Rule 37.1 petition. Attached to the response was the affidavit of the Circuit Clerk of Perry County, stating that the original orders had apparently been misfiled and could not be located. Because the original orders could not be found, Judge Sims entered new orders on September 11, 2008, denying the Rule 37.1 petition and

dismissing the motion to file an amended petition.

The circumstances in this case give us cause for concern. While respondent's having acted on the Rule 37.1 petition renders the mandamus action moot, there is nothing to show that petitioner was ever made aware when the original order or orders were entered that the Rule 37.1 petition had been denied. Arkansas Rule of Criminal Procedure 37.3(d) requires that the petitioner be promptly provided a copy of the order so that he may pursue an appeal if desired. If the lower court cannot provide documentation that the order was delivered to the petitioner in time for him to timely appeal from the order, the lower court has not met its burden of demonstrating that it complied with Rule 37.3(d). *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). Here, there is no documentation available to show that the order or orders were entered or that petitioner was informed of any ruling. We take judicial notice, however, that the circuit clerk has submitted a copy of a notice of appeal filed by petitioner on September 24, 2008, seeking review of the final orders entered September 11, 2008. Although petitioner is appealing from the adverse order, the apparent delay of approximately three years in being able to so do should not have occurred. The orderly administration of justice requires that procedures be in place to ensure that undue delay in all aspects of the judicial process are avoided. *See Smith v. Wyatt*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Sept. 25, 2008) (per curiam); *McCoy v. Phillips*, 357 Ark. 368, 166 S.W.3d 564 (2004) (per curiam).

Petition moot.